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**UNITED STATES DISTRICT COURT  
IN THE DISTRICT OF MINNESOTA**

Starkey Laboratories, Inc.,

Plaintiff,

vs.

Austin VanScoyk, an individual; and VCV  
Hearing Labs, LLC, an Arizona limited  
liability company,

Defendants.

Austin VanScoyk, an individual; and VCV  
Hearing Labs, LLC, an Arizona limited  
liability company;

Counter-Claimant,

Case No.: 0:18-cv-02669 JRT/TNL

**ANSWER TO COMPLAINT &  
COUNTER-CLAIM**

1 vs.

2  
3 Starkey Laboratories, Inc., a Minnesota  
4 corporation,

5 Counter-Defendant

6  
7 Defendants Austin VanScoyk (“Mr. VanScoyk”) and VCV Hearing Labs, LLC  
8 (“VCV”) hereby answer Plaintiff Starkey Laboratories, Inc.’s (“Starkey”) Complaint.  
9 Any allegation contained in the complaint that is not specifically admitted herein is  
10 denied.

11 **THE PARTIES**

- 12 1. Paragraph 1 is admitted.  
13 2. Allegations in Paragraph 2 that Mr. VanScoyk is a resident or citizen of the  
14 State of Arizona are admitted, all other allegations in Paragraph 2 are denied.  
15 3. Paragraph 3 is admitted.

16 **JURISDICTION AND VENUE**

- 17 4. Allegations in Paragraph 4 that Defendants transacted business in the state of  
18 Minnesota are admitted; all other allegations in Paragraph 4 are denied.  
19 5. Allegations in Paragraph 5 that a court in Minnesota is the proper forum to  
20 resolve this dispute are admitted; all other allegations in Paragraph 5 are  
21 denied.

22 **FACTS**

- 23 6. Paragraph 6 is admitted.  
24 7. Allegations in Paragraph 7 that VCV and Starkey entered into the contracts  
25 cited and that Mr. VanScoyk personally guaranteed the contracts are admitted,  
26 all other allegations in Paragraph 7 are denied.  
27 8. Paragraph 8 is admitted.  
28

- 1 9. Allegations in Paragraph 9 to the extent they accurately quote the Credit
- 2 Guaranty are admitted; all other allegations in Paragraph 9 are denied.
- 3 10. Paragraph 10 is admitted.
- 4 11. Allegations in Paragraph 11 to the extent they accurately quote the Note
- 5 Guaranty are admitted; all other allegations in Paragraph 11 are denied.
- 6 12. Paragraph 12 is admitted.
- 7 13. Allegations in Paragraph 13 to the extent they accurately quote the Security
- 8 Agreement are admitted; all other allegations in Paragraph 13 are denied.
- 9 14. Paragraph 14 is admitted.
- 10 15. Allegations in Paragraph 15 to the extent they accurately quote the Amended
- 11 Note Guaranty are admitted; all other allegations in Paragraph 15 are denied.
- 12 16. Allegations in Paragraph 16 that Starkey sold products to VCV on credit are
- 13 admitted; all other allegations in Paragraph 16 are denied.
- 14 17. Allegations in Paragraph 17 that VCV has ceased operations are admitted; all
- 15 other allegations in Paragraph 17 are denied.
- 16 18. Paragraph 18 is denied.
- 17 19. Paragraph 19 is denied.
- 18 20. Paragraph 20 is denied.
- 19 21. Paragraph 21 is denied.
- 20 22. Paragraph 22 is denied.
- 21 23. Paragraph 23 is denied.
- 22 24. Paragraph 24 is denied.

23 **CLAIM FOR RELIEF**

24 **COUNT I**

25 **-Breach of Contract-**

- 26 25. Defendants incorporate all prior allegations in response to Paragraph 25.
- 27 26. Paragraph 26 is denied.
- 28 27. Paragraph 27 is denied.

28. Paragraph 28 is denied.

29. Paragraph 29 is denied.

**AFFIRMATIVE DEFENSES**

30. Defendants assert the following affirmative defenses:

- a. Setoff;
- b. Breach of contract;
- c. Breach of covenant of good faith and fair dealing;
- d. Release;
- e. Settlement;
- f. Duress;
- g. Waiver.

**PRAYER FOR RELIEF**

THEREFORE, having fully answered Plaintiff's Complaint, Defendants pray for the following relief:

- a. Judgment in favor of Defendants with Plaintiff taking nothing;
- b. Dismissal of Plaintiff's Complaint;
- c. All other relief that is just and appropriate under the circumstances.

**COUNTERCLAIM**

Counter-Claimants, Austin VanScoyk ("Mr. VanScoyk"), and VCV Hearing Labs, LLC ("VCV") hereby allege and say as follows:

**PARTIES, JURISDICTION, VENUE**

- 1. VCV is a limited liability company existing under the laws of Arizona, with its principal place of business in the state of Arizona.
- 2. Austin VanScoyk, a married man, is a resident and citizen of the state of Arizona.

- 1 3. Mr. VanScoyk's spouse is not a party to any agreement or contract entered
- 2 into with Starkey.
- 3 4. Starkey Laboratories, Inc. ("Starkey") is a Minnesota corporation with its
- 4 principal place of business in the state of Minnesota.
- 5 5. VCV and Starkey entered into agreements subject to Minnesota law.
- 6 6. The amount in controversy in this case is more than \$75,000.
- 7 7. Counter-Claimants and Counter-Defendant are of completely diverse
- 8 citizenship.
- 9 8. This Court has diversity of citizenship jurisdiction under 28 U.S.C. § 1332.
- 10 9. Venue is proper in the Minnesota United States District Court under 28 U.S.C.
- 11 § 1391.

## 12 **FACTS**

### 13 **VCV, Mr. VanScoyk, Starkey, and the Better Sounding Network**

- 14 10. Mr. VanScoyk began VCV Hearing Labs LLC by purchasing Zounds
- 15 franchise locations in Arizona and Florida in the year 2013.
- 16 11. Zounds is a hearing aid manufacturer based in Arizona.
- 17 12. Mr. VanScoyk had a partner in VCV Hearing Labs LLC.
- 18 13. In 2016, Mr. VanScoyk and his partner decided they wanted to sell VCV.
- 19 14. Zounds and Widex each considered either purchasing or investing in VCV and
- 20 valued VCV at \$8 million.
- 21 15. Widex is a hearing aid manufacturer in Denmark.
- 22 16. In January 2017, Mr. VanScoyk contacted Starkey to negotiate a Starkey
- 23 investment in VCV.
- 24 17. Shortly thereafter, Starkey began courting VCV and Mr. VanScoyk to become
- 25 Starkey product distributors.
- 26 18. Before VCV could become a Starkey product distributor, it became necessary
- 27 for VCV to pay off its franchise agreement obligations to Zounds, and buy out
- 28 Mr. VanScoyk's partner's interest in VCV.

- 1 19. In April 2017, Starkey provided \$4,328,916.00 (the “Promissory Note”) to  
2 VCV so VCV could buy out its partner and pay off obligations under the  
3 Zounds franchise agreements.
- 4 20. At the same time, Starkey and VCV entered into a Starkey Hearing Alliance  
5 Agreement (“SHA Agreement”) whereby Starkey agreed to provide hearing  
6 aids on credit to VCV.
- 7 21. Under the Promissory Note, VCV would repay Starkey by selling Starkey’s  
8 products over 10 years.
- 9 22. To induce VCV into selling Starkey products, Starkey gifted 100 hearing aids  
10 at a value of about \$100 each to VCV.
- 11 23. Ultimately, VCV returned many of the gifted hearing aids to Starkey.
- 12 24. Starkey and VCV entered into various other agreements in addition to the  
13 SHA Agreement.
- 14 25. VCV’s principal, Austin VanScoyk (“Mr. VanScoyk”) negotiated the  
15 agreements between Starkey and VCV.
- 16 26. On June 7, 2017, VCV and Starkey amended the Promissory Note to increase  
17 the principal amount to \$4,419,894.00.
- 18 27. Through his work in the hearing aid industry, Mr. VanScoyk developed a  
19 network of hearing aid clinics across the country which were selling  
20 substantial amounts of hearing aids to end-consumers.
- 21 28. Starkey wanted to engage in a business relationship with VCV because VCV’s  
22 network of hearing aid clinics and Mr. VanScoyk’s influence on others in the  
23 industry was extensive and profitable.
- 24 29. Mr. VanScoyk had a valuable influence over other hearing aid clinics which  
25 Mr. VanScoyk did not own.
- 26 30. Mr. VanScoyk courted relationships between other hearing clinics and Starkey  
27 and started what became known as the “Better Sounding Network.”  
28

- 1 31. The Better Sounding Network included over 70 hearing aid clinics in Arizona,  
2 Florida, New Jersey, New York, South Carolina, North Carolina, Minnesota,  
3 Wisconsin, Georgia, Pennsylvania, Texas, Virginia, Michigan, Ohio, Missouri,  
4 Nebraska, Colorado, Louisiana, and West Virginia with 26 different clinic  
5 owners.
- 6 32. VCV paid off the Zounds franchise obligations for all members of the Better  
7 Sounding Network when they began their relationships with Zounds.
- 8 33. In exchange for assembling the Better Sounding Network and establishing the  
9 clinics' accounts to sell Starkey products, Starkey promised to pay Mr.  
10 VanScoyk a commission for each unit of Starkey product that clinics in the  
11 Better Sounding Network sold.
- 12 34. To implement Mr. VanScoyk's commission arrangement, Starkey hired Mr.  
13 VanScoyk as a W-2 "Sales Representative" employee.
- 14 35. Starkey was responsible to pay Mr. VanScoyk a commission of about \$185 per  
15 unit of Starkey product that each clinic in the Better Sounding Network sold.
- 16 36. Starkey committed to pay half of the commission quarterly, and would pay the  
17 remainder of the commission annually.
- 18 37. Starkey refused to pay all of Mr. VanScoyk's commissions.
- 19 **Starkey disassembled and took advantage of VCV**
- 20 38. VCV and the Better Sounding Network operated hearing aid clinics in the state  
21 of Florida.
- 22 39. Sales in Florida during the summer of 2017 were lackluster compared to  
23 projections.
- 24 40. In August and September of 2017, many residents of Florida fled the state  
25 because of the brutal 2017 hurricane season, including Hurricane Harvey and  
26 Hurricane Irma.
- 27 41. As a result of fewer residents and extensive hurricane damage, VCV's sales  
28 suffered.

- 1 42. In the wake of natural disaster, Starkey began making plans to take over the  
2 Better Sounding Network from VCV and demanded unrelenting performance  
3 in an unsustainable market.
- 4 43. However, VCV continued to operate and fervently attempted to recover.
- 5 44. During this same time, Starkey convinced Mr. VanScoyk to reveal business  
6 secrets to Starkey under the guise of offering help to recover economically.
- 7 45. Mr. VanScoyk revealed to Starkey the top performing sales people, the  
8 financial statements, the financial status, the business operations, and the  
9 marketing expenses of VCV.
- 10 46. Under the guise that it was consulting, Starkey convinced VCV to disclose  
11 VCV's most sensitive information and records to All American Hearing,  
12 Starkey's wholly owned retail hearing aid division.
- 13 47. Starkey convinced Mr. VanScoyk to engage in very expensive marketing  
14 contracts paid to Starkey's wholly owned marketing divisions which were  
15 unfruitful and squandered critical cash.
- 16 48. Starkey hired top sales people away from VCV to work directly for Starkey or  
17 for All American Hearing.
- 18 49. Starkey committed to Mr. VanScoyk on multiple occasions that it would offer  
19 financial and economic flexibility to VCV to keep it afloat during tough  
20 business times and praised Mr. VanScoyk for his tireless work to continue and  
21 recover business operations while clandestinely planning to take over VCV.
- 22 50. When Mr. VanScoyk requested financial flexibility in the relationship between  
23 VCV and Starkey, Starkey refused.
- 24 51. In early 2018, Starkey began informing VCV's personnel and members of the  
25 Better Sounding Network that VCV stopped paying its bills and was going out  
26 of business.
- 27 52. In February 2018, Starkey terminated VCV's account, preventing VCV from  
28 selling any more of Starkey's product, servicing VCV's patients, and handling



- 1 any warranty claims, which caused VCV's fragile customer base to become  
2 irate.
- 3 53. Starkey convinced Mr. VanScoyk to provide all patient lists, marketing efforts,  
4 contact information, personnel information, office equipment, leases, landlord  
5 contact information, and unsold product to Starkey under the guise that this  
6 would satisfy any contractual obligation that either VCV or Mr. VanScoyk  
7 owed to Starkey.
- 8 54. Starkey on multiple occasions affirmed to Mr. VanScoyk that it would not  
9 pursue Mr. VanScoyk for any debt allegedly owed in exchange for Mr.  
10 VanScoyk handing over the VCV operations to Starkey.
- 11 55. Realizing VCV had failed, Mr. VanScoyk began negotiating to terminate his  
12 relations with Starkey.
- 13 56. Starkey confirmed to Mr. VanScoyk that it would not pursue him because of  
14 his compliance with Starkey's business windup requests.
- 15 57. An implied term of the SHA Agreement includes the prohibition against  
16 Starkey from interfering with VCV's business operations.
- 17 58. This includes not stealing business.
- 18 59. This also includes not hiring key players away from VCV.
- 19 60. Starkey slowly crept into VCV's operations by insisting on making personnel  
20 decisions and influencing VCV into making poor business and financial  
21 decisions.
- 22 61. Starkey admitted, through its executives, that its behavior was specifically  
23 intended to precipitate the fall of VCV so that Starkey could take over the  
24 Better Sounding Network and VCV's clinics at a steep discount and operate  
25 them under Starkey's retail chain, All American Hearing.
- 26 62. Starkey refused to pay Mr. VanScoyk the commissions he was due.
- 27 63. Starkey proposed to help VCV by requesting sensitive financial and business  
28 operation information.

- 1 64. Starkey used the sensitive information it learned to further its own interests.
- 2 65. Starkey used VCV's sensitive information it learned to induce VCV's highest  
3 performing employees and sales people to quit working for VCV and go to  
4 work for Starkey.
- 5 66. Starkey used the sensitive information to disassemble VCV's network of  
6 hearing aid clinics for the purpose of devaluing VCV.
- 7 67. After Starkey caused the disassembly of VCV's network, it convinced Mr.  
8 VanScoyk to help it re-assemble the pieces in exchange for Starkey's  
9 aforementioned promise not to pursue Mr. VanScoyk for any alleged default  
10 of the Promissory Notes and SHA Agreement.
- 11 68. Mr. VanScoyk provided all information that Starkey requested and helped  
12 Starkey to assume operations of VCV.
- 13 69. Mr. VanScoyk maintained the integrity of VCV's records, which are valuable,  
14 and provided them directly to Starkey so Starkey could assume operation of  
15 VCV's hearing clinics through its retail stores, All American Hearing.
- 16 70. Mr. VanScoyk provided significant value to Starkey in the process of  
17 transferring VCV to Starkey and disassembling the Better Sounding Network.
- 18 71. This value includes but is not limited to phone lines, patient databases,  
19 marketing materials, financial statements, personnel, office equipment, office  
20 leases, business operation details and unsold Starkey product.
- 21 72. Neither Mr. VanScoyk nor VCV received any credit for the value they  
22 conferred to Starkey.

23 **COUNT I – BREACH OF CONTRACT**

- 24 73. VCV incorporates all prior allegations by this reference.
- 25 74. VCV and Starkey are parties to multiple contracts.
- 26 75. Starkey breached the terms of the contracts.
- 27 76. VCV suffered damages caused by Starkey's breach of the contracts in an  
28 amount to be determined at trial.

**COUNT II – BREACH OF DUTY OF GOOD FAITH & FAIR DEALING**

77. VCV incorporates all prior allegations by this reference.

78. Every contract entered into in Minnesota includes an implied duty of good faith and fair dealing.

79. Starkey breached the duty of good faith and fair dealing by preventing VCV from obtaining the benefit of its contracts.

80. VCV suffered damages caused by Starkey's breach of the duty of good faith and fair dealing in an amount to be determined at trial.

**COUNT III – UNPAID WAGES**

81. Mr. VanScoyk incorporates all prior allegations by this reference.

82. Mr. VanScoyk is an employee of Starkey.

83. Mr. VanScoyk is entitled to payment of commissions for his work for Starkey.

84. Mr. VanScoyk demanded that Starkey pay his commissions.

85. Starkey refused to pay Mr. VanScoyk his commissions.

86. Starkey is liable to Mr. VanScoyk for \$225,000 in unpaid commissions.

87. Starkey is liable to Mr. VanScoyk for statutory damages under M.S.A. § 181.13.

88. Starkey is liable for Attorneys' fees and costs under M.S.A. § 181.171.

89. Starkey is liable to Mr. VanScoyk for compensatory damages and other relief under M.S.A. § 181.171 in an amount to be proven at trial.

**COUNT IV – DECLARATORY JUDGMENT**

90. Mr. VanScoyk and VCV incorporate all prior allegations by this reference.

91. A justiciable controversy exists concerning breach of the contracts between the parties, enforceability of the Promissory Notes, and whether Mr. VanScoyk is entitled to recover unpaid commissions.

92. Declaratory judgment would terminate the controversy between the parties.

93. Counter-Claimants request a speedy hearing as contemplated under F.R.C.P. 57.

**COUNT V – TORTIOUS INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE**

94. VCV incorporates all prior allegations by this reference.

95. Starkey induced or otherwise caused third persons not to enter into or continue their prospective relations with VCV, and prevented others from acquiring or continuing prospective relations with VCV.

96. Starkey prevented VCV from selling its hearing aid clinics to Zounds or Widex.

97. Starkey hired key performing sales people away from VCV for the purpose of crippling VCV's sales for the benefit of Starkey.

98. Starkey misappropriated valuable data from VCV for the purpose of crippling VCV for the benefit of Starkey.

99. Starkey's interference with economic advantage caused damages to VCV in an amount to be proven at trial.

**DEMAND FOR JURY TRIAL**

100. Counter-Claimants demand trial by jury.

**PRAYER FOR RELIEF**

THEREFORE, Counter-Claimants pray for the following relief:

- a. Speedy hearing under FRCP 57;
- b. Declaratory judgment;
- c. Actual damages;
- d. Consequential damages;
- e. Statutory damages;
- f. Special damages of \$225,000;
- g. Attorneys' fees;
- h. Costs;
- i. All other relief the Court deems appropriate under the circumstances.

1 RESPECTFULLY SUBMITTED this 17th day of September, 2018.

2  
3 EIDSNESS LAW OFFICES, PLC

4  
5 /s/ Paul T. Eidsness  
6 Paul T. Eidsness  
7 *Attorneys for Defendants*

8  
9 **CERTIFICATE OF SERVICE**

10  
11 I hereby certify that on September 17, 2018, I electronically transmitted the  
12 attached document to the Clerk's Office using the CM/ECF System for filing and  
13 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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